



Comptroller General  
of the United States

429166

Washington, D.C. 20548

## Decision

**Matter of:** Omni Corporation

**File:** B-257256

**Date:** June 16, 1994

### DECISION

Omni Corporation protests the decision to award a contract to Ferguson-Williams, Inc. without conducting discussions under request for proposals (RFP) No. DACW38-94-R-0004, issued by the Army Corps of Engineers, Vicksburg District. Omni argues that the agency "forfeited" its opportunity to award the contract without conducting discussions because the solicitation did not contain the specific clause allowing such award.

We dismiss the protest.

The solicitation, issued on October 28, 1993, requested proposals for the operation, maintenance and repair of government-managed facilities, grounds, and flood control structures at the Arkabutla, Sardis, Enid, and Grenada Lakes in the state of Mississippi. Award was to be made to the highest-evaluated offeror whose offer was most advantageous to the government considering the technical, management capability, and cost factors. Initial proposals were submitted on February 22, 1994, and the agency awarded the contract to Ferguson on the basis of those initial proposals, without conducting discussions with all offerors in the competitive range.

Under the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(a)(2)(B)(ii) (1988), as amended by the National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510, § 802, 104 Stat. 1485, 1588, solicitations for competitive proposals must contain:

"A statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification), unless discussions are determined to be necessary."

This provision, as implemented by Federal Acquisition Regulation (FAR) § 15.407(d)(4), requires that all solicitations for competitive proposals issued by the Department of Defense, the Coast Guard and the National Aeronautics and Space Administration include either the notice at FAR § 52.215-16(c) Alternate II, if the contracting officer intends to hold discussions, or FAR § 52.215-16(c) Alternate III, if the contracting officer intends to award without discussions.<sup>1</sup>

The solicitation here did not include either FAR § 52.215-16(c) alternate. However, section L.17 of the RFP did include FAR § 52.215-16, which states that the government may award a contract on the basis of initial offers received, without discussions. In addition, section M.4 of the RFP instructed that if an offeror submitted a proposal that was clearly and substantially more advantageous to the government than any other proposal, an award might be made on the basis of the initial offer without negotiation.

Omni's argument that discussions were required because the solicitation did not include Alternate III is untimely. Under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation must be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1994). Here, Omni knew at the time it received the RFP that the solicitation failed to include either the current Alternate III clause, which was required if the agency intended to award the contract on the basis of initial proposals, or the Alternate II clause, which states that the agency intends to hold discussions. If Omni desired that the solicitation more clearly set forth the contracting officer's intentions regarding discussions, it was required to protest this matter before the closing date for receipt of initial proposals. ADT Security Sys., Inc., B-249932.2, Feb. 4, 1993, 93-1 CPD ¶ 100.

As Omni failed to timely protest the terms of the RFP regarding discussions, we need only decide whether the award was consistent with the terms actually included in the

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<sup>1</sup>Alternate II states, "The Government intends to evaluate proposals and award a contract after written or oral discussions with all offerors who submit proposals within the competitive range." Alternate III states, "The Government intends to evaluate proposals and award a contract without discussions with offerors. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary."

solicitation. The RFP stated that "if an offeror submitted a proposal which was, in the contracting officer's opinion, clearly and substantially more advantageous to the government than any other proposal, an award might be made on the initial offer without negotiation." Ferguson submitted the second highest-rated technical proposal; the agency reports that the difference between Ferguson's technical proposal and a third offeror's highest-rated proposal came under the least important technical evaluation factor. In addition, Ferguson's proposed total cost was the lowest of the thirteen, and substantially lower than that of the firm submitting the highest-rated technical proposal. Under these circumstances, and since the RFP advised offerors that award could be made without discussions, we think that the award to Ferguson was proper and consistent with the terms of the solicitation.<sup>2</sup> Id.

In its response to the agency's request for summary dismissal, Omni suggests that the contracting officer improperly determined that discussions were not necessary to ascertain which proposal was most advantageous to the government. However, a protest based on other than a solicitation impropriety must be filed not later than 10 days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). While Omni states that it was notified of the agency's decision to award the contract without conducting discussions on April 29, it did not raise this basis of protest until May 17, more than 10 days later. Supplements to protests must independently satisfy the timeliness requirements in our Bid Protest Regulations. See 4 C.F.R. § 21.2(a)(2); Little Susitna Co., 65 Comp. Gen. 652 (1986), 86-1 CPD ¶ 560. Our Regulations do not contemplate the unwarranted piecemeal presentation and development of protest issues. Id. Accordingly, we will not consider this contention.

The protest is dismissed.

*Christine S. Melody*

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<sup>2</sup>We note that Omni's technical proposal was rated seventh of the thirteen submitted, and its total proposed cost was substantially higher than Ferguson's.